

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
June 19, 2007 Session

**JAMES EDWARD HOLT v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Williamson County**  
**No. CR 051848     Jeffrey S. Bivins, Judge**

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**No. M2006-02159-CCA-R3-PC - Filed August 7, 2007**

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The Petitioner, James Edward Holt, a.k.a. Jimmy Holt, was indicted by a Lewis County grand jury for first degree premeditated murder on April 2, 1992. The Petitioner pled guilty to second degree murder on October 19, 1992. The negotiated plea agreement recommended that the Petitioner be sentenced as a Range II, multiple offender to serve forty years in the Department of Correction. The trial court imposed the recommended sentence. On May 9, 2006, the Petitioner filed a “Petition for Post-Conviction Relief, Correction of Sentence or, in the alternative, Habeas Corpus Relief” in the Williamson County Circuit Court. The post-conviction court summarily dismissed the petition without a hearing. Finding no error, we affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

DAVID H. WELLES, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ROBERT W. WEDEMAYER, JJ., joined.

Lloyd R. Tatum, Henderson, Tennessee, for the appellant, James Edward Holt.

Robert E. Cooper, Jr., Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Ronald L. Davis, District Attorney General; and Derek K. Smith, Deputy District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Background**

This case arises from the murder of the Petitioner’s wife in Lewis County, Tennessee. The record on appeal does not contain the factual circumstances underlying the conviction. At issue in this case is the petition for post-conviction relief, which alleges that the Petitioner received an illegal sentence which tolls the statute of limitations and allows the Petitioner to seek post-conviction

review. The post-conviction court summarily dismissed the Petitioner's petition on the following grounds:

Tenn. Code Ann. § 40-30-102(a) establishes a one-year statute of limitations for the filing of petitions for post-conviction relief. Under this provision, the petition must be filed "within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final . . . ." In this matter, the Petition on its face, recites that the Petitioner was sentenced in the underlying action on October 19, 1992, and that the Petitioner did not appeal his sentence. The Petitioner did not file the instant petition until May 9, 2006, over thirteen (13) years after the judgment became final.

Tenn. Code Ann. 40-30-102(b) does set forth three limited exceptions to this one-year statute of limitations. However, the Petitioner has alleged no facts that would entitle him to relief under this provision.

The only basis asserted by the Petitioner as purported grounds for tolling the statute of limitations is that the Petitioner "is not learned in the law and has only recently retained counsel on the matters herein." Petition, ¶ 8. Such alleged grounds do not fall within the statutory exceptions and are an inadequate basis for granting relief from the one-year statute of limitations. See Phillips v. State, 2003 Tenn. Crim. App. LEXIS 812 (Tenn. Crim. App., Sept. 16, 2003).

Therefore, the Court finds that the Petition for Post-Conviction Relief was not timely filed. Accordingly, the Petition for Post-Conviction Relief is DISMISSED.

The post-conviction court further concluded that, if the petition were treated as seeking habeas corpus relief, the Petitioner did not comply with the mandatory procedural requirements for habeas corpus relief because copies of the underlying judgments were not attached to the petition as required by Tennessee Code Annotated section 29-21-107(b)(2), and because the petition was not filed in the county in which the Petitioner was incarcerated as required by Tennessee Code Annotated section 29-21-105. It is from this order summarily dismissing the petition that the Petitioner now appeals.

### **Analysis**

On appeal, the Petitioner argues that he is entitled to post-conviction relief because he received an illegal sentence and that the statute of limitations should be tolled. The crux of the Petitioner's argument is that his sentence is illegal because he pled guilty to a recommended Range II sentence, yet his prior felony convictions qualified him only as a Range I offender. The State responds that the Petitioner's post-conviction petition is time-barred and that his sentence is not illegal. We agree with the State.

Under Tennessee Code Annotated section 40-30-102, a petition for post-conviction relief must be filed “within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of the petition shall be barred.” Tenn. Code Ann. § 40-30-102(a). If this requirement is not met, a court does not have jurisdiction to consider a petition unless the following criteria are met:

(1) The claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required . . . ;

(2) The claim in the petition is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid . . . .

Tenn. Code Ann. § 40-30-102(b)(1)-(3).

If these exceptions to the one-year filing requirement do not apply, a court is not permitted to address the petition for post-conviction relief. Tenn. Code Ann. § 40-30-102(a). “The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity.” Id. “Time is of the essence of the right to file a petition for post-conviction relief . . . and the one-year limitations period is an element of the right to file the action and is a condition upon its exercise.” Id.

In this case, the Petitioner filed his petition over thirteen years after his judgment became final. Obviously, the one-year statute of limitations period had expired. Furthermore, the Petitioner does not assert that he meets any of the criteria for an exception set forth in Tennessee Code Annotated section 40-30-102(b), and we conclude that he does not.

The Petitioner argues that an illegal sentence tolls the running of the statute of limitations. In support of this argument, he posits that an illegal sentence may be set aside at any time, even if it has become final and cites State v. Mahler, 735 S.W.2d 226, 228 (Tenn. 1987). While a void or illegal sentence also may be challenged collaterally in a post-conviction proceeding, a petitioner must meet the statutory requirements, including the one-year limitations period. Summers v. State, 212 S.W.3d 251, 256 n.3 (Tenn. 2007). The relevant statute-of-limitations inquiry is whether due process concerns require tolling of the limitations period. The Tennessee Supreme Court has held that, in limited circumstances, the statute of limitations for filing a post-conviction petition should be tolled when “strict application of the statute of limitations would deny a defendant a reasonable

opportunity to bring a post-conviction claim and thus, would violate due process.” Williams v. State, 44 S.W.3d 464, 468 (Tenn. 2001) (citing Burford v. State, 845 S.W.2d 204 (Tenn.1992)). In his petition, the Petitioner states that he “is not learned in the law and has only recently retained counsel on the matters herein.” However, the Petitioner has not pointed to any facts that explain the delay in filing the petition and which raise a potential due process concern with regard to the application of the statute of limitations. The record does not indicate that the Petitioner was “denied the reasonable opportunity to assert a claim in a meaningful time and manner.” Seals v. State, 23 S.W.3d 272, 279 (Tenn. 2000) (holding that the statute of limitations should be tolled during time that petitioner was mentally impaired). The post-conviction court properly determined that the petition was time-barred.

Moreover, we note that a habeas corpus action is also a proper procedure for challenging the legality of a sentence. See Moody v. State, 160 S.W.3d 512, 516 (Tenn. 2005) (stating that “the proper procedure for challenging an illegal sentence at the trial level is through a petition for writ of habeas corpus”), see also Summers, 212 S.W.3d at 256. It is well settled that a trial court is not bound by the title of the pleading but has the discretion to treat the pleading according to the relief sought. Norton v. Everhart, 895 S.W.2d 317, 319 (Tenn. 1995). There is no habeas corpus statute of limitations. Moody, 160 S.W.3d at 516.

First, we agree with the post-conviction court that the Petitioner has failed to meet the mandatory procedural requirements for habeas corpus relief. See Tenn. Code Ann. §§ 29-21-105, -107. Furthermore, this Court has concluded that the sentencing procedure followed in the Petitioner’s case does not result in an illegal sentence:

Even if Petitioner was sentenced, pursuant to a negotiated plea agreement, as a Range II offender and he did not have sufficient convictions for this classification under Tennessee Code Annotated section 40-35-106(a), the sentence is not necessarily an “illegal sentence.” In McConnell v. State, 12 S.W.3d 795 (Tenn. 2000), our supreme court recognized that in a negotiated plea agreement, a defendant can be sentenced as a Range II offender, even if he or she would be sentenced as a Range I offender absent a negotiated plea agreement, as long as the sentence is within the limits fixed for a Range II offender. Id. at 798.

Charles Bryant v. State, No. M2001-02456-CCA-R3-CD, 2002 WL 1733728, at \*1 (Tenn. Crim. App., Nashville, July 26, 2002). The sentence the Petitioner received was within the limits fixed for a Range II offender for the crime of second degree murder. See Tenn. Code Ann. § 40-35-11(b)(1). We thus conclude that the Petitioner has not demonstrated that he received an illegal sentence. See Mahler, 735 S.W.2d at 228.

### **Conclusion**

The petition for post-conviction relief is time-barred and, insofar as the petition is considered as one for habeas corpus relief, the Petitioner has failed to state a cognizable claim. The judgment is affirmed.

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DAVID H. WELLES, JUDGE